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NO.

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

STATE OF ILLINOIS,

Petitioner,

vs.

CARY WAYNE WISEMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether the defendant's fifth and fourteenth amendment rights were violated where the record is completely void of any evidence of coercive police activity and where the record clearly indicated that the defendant freely chose to waive his Miranda rights and discuss the case with investigators.

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ON PETITION FOR WRIT OF
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APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Appellate Court of Illinois, First Judicial District, which was entered on September 12, 1986.

OPINION BELOW

The Published opinion of the Appellate Court of Illinois, First Judicial District, is reproduced in Appendix A to this Petition.

JURISDICTION

The opinion, order and judgment of the Appellate Court of Illinois, First Judicial District, were entered on September 12, 1986. The People of the State of Illinois then petitioned the Supreme Court of Illinois for leave to appeal. On December 3, 1986, the Supreme Court of Illinois denied the petition for leave to appeal. This Petition for a Writ of Certiorari is filed within 60 days of that date. United States Supreme Court Rule 20(1). The decision of the Appellate Court of Illinois was explicitly based on federal constitutional law. Specifically , the Appellate Court of Illinois held that defendant involuntarily made inculpatory statements in violation of the Fifth Amendment. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION -

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION -

FOURTEENTH AMENDMENT (SECTION 1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunites of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On February 26, 1985, the victim, Faith Unverzagt was stabbed to death. The victim's body had been repeatedly stabbed, cut and mutilated and her throat had been slit. (R.10, 40)

On March 4, 1985, the defendant was charged under Indictment Number 85-C-3311 with the murder of Faith Unverzagt. The defendant was also charged with armed violence and home invasion. (R. C470-C486) Defense counsel filed a motion to suppress statements on July 30, 1985. (R. 508-510) The Honorable Gerald Rohrer conducted a hearing on the defense motion from October 2nd to October 7th, 1985. Judge Rohrer found statements givens to the police prior to 3:00 a.m. on Febrary 26, 1985, were admissible at trial, since they were either

made prior to defendant's arrest or they were made as a result of defendant's free and voluntary waiver of constitutional rights. (R.448) However, the court further found that defendant's statements made subsequent to the removal of the defendant's clothes at approximately 3:00 a.m. were coercive and should be suppressed. (R. 449)

At the hearing on the defendant's motion to suppress, the State of Illinois presented the testimony of Officers McHenry, Janosz, and Carter; Investigators Jones, Smith, Harris and Allison; Assistant State's Attorney's Bruno and Wolter. The evidence adduced during the hearing established that the following events led to the defendant's arrest and subsequently made statements.

On February 25, 1985, at about 11:15 p.m. Officers McHenry and Janosz of the Cook County Police, received a call that

there was a body at 9604 Bianco Terrance located in unincorprated Des Plaines, Illinois. (R. 8) The dispatcher indicated that the Des Plaines Police were talking to an individual named Cary who had discovered the body. (R. 8)

Shortly after Officers McHenry and Janosz arrived on the scene, Officer Candilas arrived. (R.8) Officer Candilas was instructed to remain at the back door while Officers McHenry and Janosz proceeded to the front door. (R.9) The front door was open and they could hear crying. (R.9) They entered the apartment and saw the defendant on his knees bent over the victim. (R.10) The defendant was cradling the victim with one arm and holding a telephone receiver with the other hand. (R. 10) It appeared to the officers that the body had multiple stab and cut wounds.

(R. 10) The neck of the victim had been slashed and a knife was protruding from the victim's chest. (R. 10, 39)

Officers McHenry and Janosz asked the defendant to get up, but the defendant continued to sob hysterically ignoring the officers' request. The officers then took the defendant by the arm to help him to get up and away from the victim's body. (R. 42) The defendant began to struggle with the police swinging his arms in an attempt to get back to the victim's body. (R. 10, 44) The officers finally succeeded in separating the defendant from the victim's body, and they pulled the defendant into the hallway area away from the scene of the crime. (R. 12, 45) The officers checked the rest of the apartment then called an ambulance. (R. 13) Officer Carter arrived during this period and helped to restrain the defendant until the ambulance

arrived. (R. 13, 51) The defendant was not under arrest, but was restrained by the officers in order to prevent him from hurting himself or causing damage to the crime sceme. (R. 14, 47)

The ambulance arrived and took the defendant to Lutheran General Hospital for treatment. (R. 51) Officer Carter accompanied the defendant in the ambulance to the hospital. While enroute to the hospital, Officer Carter asked the defendant his name, how he got to the victim's apartment, and the name of the victim. (R. 74) In response to Officer Carter's questions, the defendant said the victim's name was Faith and that he was driven to the victim's apartment by a friend named Jerry. The defendant also told the officer "I'm going to get even with John." (R. 74, 75, 90) Officer Carter requested a separate room or area at the hospital where the

defendant could be treated for his emotional distress. (R. 74) Once the defendant arrived at the hospital, his handcuffs were removed, and he was never handcuffed again. (R. 78) The defendant was at the hospital for approximately ninety minutes. (R. 75)

Shortly after midnight on February 26, Investigator Allison was on duty at the Cook County Sheriff's Police Headquaters, North Investigations located at Skokie, Illinois (hereinafter referred to as North Investigations). Investigator Allison received a call from the communications department requesting investigators at 9602 Bianco Terrace, Apartment B. Investigators Tishouser and Jones responded immediately, while Investigator Allison finished some paper work intending to go to that address later. While enroute to 9604 Bianco Terrace, Investigator Allison monitored the

radio. There was a request for an investigator to go to Lutheran General Hospital to speak to a witness. Since Investigator Allison was in the vicinity of the hospital he volunteered. (R. 333) Upon arriving at the hospital he was advised by Officer Carter that the defendant had found the body of the victim, Faith Unverzagt, and that the defendant had become uncontrollable, had to be physically restrained, and was then transported to the hosptial. Investigator Allison was also advised that the defendant had knowledge as to a possible offender in the case, a person by the name of John. (R.335) After talking to the defendant at the hospital, Investigator Allison, accompanied the defendant to North Investigations. R. 343) Upon arriving at North Investigations headquarters at approximately 2:00 a.m. the defendant was taken to an office to make a formal state-

ment. (R. 343, 344) The defendant was cooperative with the investigator and stated he wanted to help find Faith's killer. (R. 344)

Investigator Allison, Officer Carter and the defendant were present during this initial interview. The interview had barely begun when Officer Carter interrupted to inform Investigator Allison that there was a material inconsistency in what the defendant originally said in the ambulance and the story he was telling now. (R. 346) It was at this point, 2:30 a.m. that Investigator Allison considered the defendant a suspect and the likely killer. Investigator Allison immediately informed the defendant of his rights. (R. 347-349) The defendant indicated that he understood his rights and also that he did not want a lawyer. (R. 347) At this time, Investi-

gators Allison and Harris briefly questioned the defendant. (R. 304, 347)

Shortly after this occurred, other officers involved in the investigation began to assemble at the North Investigation Headquarters. (R. 349) Between the hours of 3:00 a.m. and 4:00 a.m., the investigation continued as the officers took fingernail scrapings, fingerprints and defendant's clothes for analysis. (R. 351-353) When the officers took the defendant's clothes for processing, the defendant waited in his shorts in Investigator Allison's office. The defendant was not questioned at this time. (R. 353) Shortly thereafter, clothing from a nearby hosptial was obtained for the defendant to wear. (R. 382-383) In the meantime, Investigators Smith and Jones had been investigating the crime in the field in-

terviewing the victim's parents, the defendant's wife and the defendant's friend "Jerry." (R. 145)

As the investigation progressed, the defendant was question at 4:00 a.m. by Investigator Allison. (R. 354) The next time defendant was interviewed was at about 6:00 a.m. when Officers Smith and Jones spoke to the defendant for approximately 1½ hours. (R. 139, 188) Investigator Smith asked if he had been informed of his Miranda rights. The defendant stated that he had and that he wished to help with the investigation. (R. 141, 190) During this interview the defendant was asked if he wanted something to drink and eat which he accepted. (R. 194) The defendant was also given cigarettes and was allowed to telephone both his wife and mother. (R. 193-195) Investigator Smith testified

that the defendant never complained about being tired, that he did not ask for an attorney, nor did he refuse to answer questions. (R.191, 195) During the entire time, the defendant was at the Investigation North Headquarters, he was not handcuffed. (R. 78)

At approximately 7:00 a.m., the defendant's wife and children arrived at North Investigations Headquarters where they were permitted to visit with the defendant. (R. 329) At this time the defendant's wife brought the defendant a change of clothing. (R. 331)

At approximatley 8:00 a.m., Assistant State's Attorney Bruno interviewed the defendant. He informed the defendant of his occupation and gave the defendant his Miranda warnings. (R. 285) Assistant State's Attorney Bruno informed the de-

fendant that defendant was under no obligation to speak to him and that the defendant had the right to remain silent. The Assistant State's Attorney explained to the defendant that if he wished to speak to an attorney he had an opportunity to do so. If the defendant could not afford an attorney one would be appointed for him. (R. 285, 286) After being informed of his rights, the defendant indicated he understood those rights and he wished to speak to Assistant State's Attorney Bruno without the assistance of an attorney. Assistant State's Attorney Bruno spoke to the defendant for approximately thirty minutes. (R. 286)

Later at 10:15 a.m., Assistant State's Attorney Wolter interviewed the defendant in the presence of Assistant State's Attorney Bruno and Investigator Harris. (R.

247) Assistant State's Attorney Wolter informed the defendant of his Miranda warnings. (R. 276) After acknowledging his rights, the defendant stated he did not wish to speak about the incident and Assistant State's Attorney Wolter stopped all questioning immediately. (R. 277)

The defendant's wife, Kim Wiseman, testified that after receiving a call from her husband, she went to North Investigations Headquarters. (Supp. R. 11) When she arrived, she was greeted by Officer Smith who took Mrs. Wiseman and her two sons to see the defendant. (Supp. R. 12) She brought a change of clothing for the defendant and remained in the office with the defendant for approxomately twenty-five minutes. (Supp. R. 14)

At the suppression hearing, the Honorable Gerald Rohrer found that the defendant voluntarily accompanied the

officers to North Investigations and that he did not become a suspect and was not placed under arrest until he contradicted his earlier statements made to the police. The court further found that the defendant was not incapacitated by any alleged intoxication, or alleged emotional disturbance and specifically noted that the defendant demonstrated that he understood his rights and was able to respond to the officers in a rational, logical, clear and concise manner. The court then ruled that any statements made by the defendant prior to 3:00 a.m. were admissible in that the defendant had freely and voluntarily waived his Constitutional rights. However, the court also ruled that any statements made by the defendant subsequent to the removal of his clothing at approximately 3:00 or 3:15 a.m. on February 26, 1985, would be suppressed. The court stated that because

the defendant's clothes were removed for a period of time and because the defendant was kept in the interrogation room for approximately seven hours and was not allowed to sleep or eat, defendant's statement made after 3:00 a.m. were not freely and voluntarily made. (R. 429-449)

The Appellate Court affirmed the trial court's ruling and in addition found that if the defendant was allowed to speak with family members immediately, he would have been prevented from making inculpatory statements to the police. People v. Wiseman, 85-3141 (Rule 23, First District, Fifth Division, September 12, 1986).

REASON FOR GRANTING THE WRIT

THE DEFENDANT'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS WERE NOT VIOLATED WHERE THE RECORD IS COMPLETELY VOID OF ANY EVIDENCE OF COERCIVE POLICE ACTIVITY AND WHERE THE RECORD CLEARLY INDICATES THAT THE DEFENDANT FREELY CHOSE TO WAIVE HIS MIRANDA RIGHTS AND DISCUSS THE CASE WITH INVESTIGATORS.

The issue presented at bar is whether the trial court properly allowed the motion to suppress defendant's statements. Whenever the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our Miranda doctrine, the state need prove waiver only by a preponderance of the evidence. Colorado v. Connelly Slip. Op.

85-660, (December 10, 1986) The dispositive inquiry concerning this motion was whether the defendant's statements were voluntary. The test for voluntariness is whether the statement was made freely and without compulsion or inducement of any sort or whether the defendant's will was overcome at the time he confessed. This Court has held that courts look at the totality of the circumstances in determing whether a statement was voluntarily given. Boulden v. Holman, 394 U.S. 478, 89 S.Ct.1138, 22 L.Ed.2d 433 (1969), Brown v. Illinois, 422 U.S.590, 45 L.Ed.2d 416, 95 S.Ct.2254 (1975))

Factors to be considered in determining whether a statement is voluntary are the age, education and intelligence of the accused, the duration of questioning and whether the accused was given his Constitutional rights or subjected to physical

punishment. Schneckloth v. Bustamonte, 412 U.S. 218, 226, 36 L.Ed.2d 854, 862, 93 S.Ct.2041, 2047 (1973)

In the case at bar, the trial court's ruling that suppressed any statements made by defendant after 3:00 a.m., was manifestly erroneous in that the trial court failed to consider the totality of the circumstances and relied on facts not supported by the record in reaching its decision. On appeal the State of Illinois argued that the uncontradicted record established that the defendant's statements were made freely and voluntarily. The Appellate Court of Illinois affirmed the trial court's ruling without giving a basis for its decision other than stating that from a review of he record it could not conclude that the trial court's ruling was manifestly erroneous. Slip. Op. at 7. The State of Illinois asserts that the totality

of the facts and circumstances establish that the defendant's statements were freely and voluntarily made.

The issue presented here is important in that the trial court and Illinois Appellate Court have miscontrued the facts and the law and in doing so have reached an incorrect and gravely unjust result.

On February 26, 1985, the defendant was arrested and charged by indictment for the murder of Faith Unverzagt. (R. 347) At approximately 11:15 p.m., February 25, 1985, the defendant called the police from the victim's apartment at 9604 Bianco Terrace. (R. 7,8) When Officers McHenry and Janosz arrived, they found the defendant bent over the victim's body sobbing hysterically. (R. 10) The police tried to separate the defendant from the victim, but the defendant resisted swinging his arms,

striking the officers. (R. 10-13) The defendant was finally restrained and an ambulance was called. (R. 10) Officer Carter accompanied the defendant in the ambulance to Lutheran General Hospital and spoke to the defendant briefly. (R. 48-51) After receiving treatment, the defendant was taken to the Cook County Sheriff's Police Headquarters, North Investigations, to make a formal statement. (R. 346) At this juncture, the defendant was not considered a suspect. It was shortly thereafter, during the interview at North Investigations with Investigator Allison that the defendant made an inconsistent statement which caused Investigator Allison to place the defendant under arrest. (R. 347)

At the time the defendant was placed under arrest, he was advised of his Constitutitonal rights. (R. 347) The defendant acknowledged those rights and

stated that he wished to speak to Investigator Allison. (R. 347) After this initial interview of the defendant, evidence technicians were requested to test the defendant's clothing and to take nail scrapings and hair samples of the defendant. (R. 351, 352) As a result, the defendant was left for approximately thirty minutes, alone in a room without his pants socks, shirt and shoes. (R. 393) The police provided the defendant with hospital garb to wear until his wife arrived with more clothing. (R. 352) During this short period, the defendant was left alone in an office and was not interviewed by any of the investigating officers. (R. 353) Thereafter, the defendant was questioned by Investigator Allison at 4:00 a.m., at 6:00 a.m. by Officers Smith and Jones, and by Assistant State's Atttorney Bruno at 8:00 a.m. (R. 190, 247, 284, 347) When As-

sistant State's Attorney Wolter asked to talk to defendant at approximately 10:00 a.m., defendant stated he did not want to talk and all questioning ceased. At all times, the defendant was advised of his constitutional rights and the defendant waived those rights. (R. 190, 248, 285, 347) The defendant at the suppression hearing never claimed he was coerced or threatened.

Despite these facts, the trial judge ruled that any statements made by the defendant, subsequent to his clothing being taken for tests, should be suppressed.

The court based the suppression of the defendant's statements upon the fact that the defendant's free will was overcome when his clothes were taken for testing for a period of 30 minutes. (R. 448) However, what the court did not take into consideration is the vital fact that the de-

fendant was left completely alone in an office during that period. All interrogation was stopped and all of the investigators left the office where the defendant was waiting. They allowed the defendant to remain unattended until a change of clothing was supplied approximately 30 minutes later. (R. 354) The record shows that the defendant was advised of his rights several times, and each time he indicated he understood those rights. (R. 191, 248, 285, 347)

The defendant initiated his incriminating statements to the police by affirmatively waiving his right to counsel and discussing the matter with the investigators. The record unequivocally demonstrates that the defendant's statements were freely and voluntarily made.

In the recent case of Colorado v.

Connelly, the defendant approached a Denver police officer and stated that he had murdered someone and wanted to talk about it. The officer advised defendant of his Miranda rights, and defendant said he understood those rights but still wanted to talk about the murder. Shortly thereafter, a detective arrived and again advised defendant of his Miranda rights. The defendant indicated he wished to talk about the murder, he was then taken to police headquarters where he openly detailed his story to the police. Later he pointed out the exact location of the murder. He was held overnight, and the next day he became visibly disoriented during an interview with the public defender's office and was sent to a state hospital for evaluation. Interviews with a psychiatrist revealed that defendant was following the "voice of

God" in confessing to the murder. This court held that coercive police activity is a necessary predicate to finding that a confession is not "voluntary" within the meaning of the Due Process Clause. Colorado v. Connelly, Slip. Op. 85-660, (December 10, 1986.) Absent some coercive police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law. Suppressing the defendant's statements would serve absolutely no purpose in enforcing constitutional guarantees. Colorado v. Connelly, Slip. Op. 85-660, (December 10, 1986.) Justice Rehnquist set out examples of coercive police activity which called for suppressing statements in order to enforce constitutional guarantees. Colorado v. Connelly, Slip. Op. 85-660, footnote 1 (December 10, 1986) However,

Justice Rehnquist also reiterated this Court's apprehension of expanding currently applicable exclusionary rules by erecting additional barriers to placing truthful and probative evidence before state juries. Id, at p.7. The central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and while the court has previously held that exclusion of evidence may be necessary to protect constitutional guarantees, both the necessity for the collateral inquiry and the exclusion of evidence deflect a criminal trial from its basic purpose. Id at 7.

Suppressing the defendant's statements in the case at bar would serve no purpose in enforcing constitutional guarantees simply because none was violated.

The defendant here made no claims whatsoever that he was mistreated by the

police and the record is void of any such incidents of coercive action by police. Like the defendant in Colorado v. Connelly, the defendant in the case at bar demonstrated a willingness to talk about the murder from the moment he first encountered the police at the crime scene. Even after he became a suspect, was arrested and repeatedly advised of his Miranda rights, defendant continued to freely and voluntarily talk to the police as they continued their investigation. Thus, the totality of the facts and circumstances establish that the defendant's statements were made freely and voluntarily.

In the case at bar, the trial judge cited People v. Jackson, 35 Ill.2d 162, 220 N.E.2d 229 (1966), as support for it finding that the defendant's confession was coerced because his clothes were removed.

Not only does Jackson support the State of Illinois' argument at bar, its holding is contrary to the trial court's ruling. In Jackson, the defendant argued that since he was required to expose himself prior to giving his confession his statements were involuntary. The Illinois Supreme Court stated that the fact that a defendant is made to drop his pants while being questioned is simply a factor to be considered in determing the voluntariness of his confession. In that case, it was not the only factor considered by the court. The court also considered when the defendant was requried to remove his clothing, in addition to the overall conduct of the police and found that even though the defendant was asked to drop his pants it was unrelated to his confession, thus the confession voluntarily made.

Moreover, the defendant in the case at bar, unlike the defendant in Jackson was never asked to remove his clothing while he was being interrogated.

The defendant had waived his right to an attorney and freely made statements to the police prior to the removal of his clothes. (R. 179, 189, 347) The later statements by the defendant were not a result of coercive behavior by the police, rather they were a continuation of the previous interviews. (R. 227) Clearly, the defendant's free will was not overcome. He freely chose to waive his Miranda rights and discuss the case with the investigators.

In conclusion, the People submit that the Illinois Appellate Court erred in affirming the trial court's order granting defendant's motion to suppress statements.

The record discloses that the police were conducting an ongoing investigation in a reasonable and lawful manner. The defendant was discovered at the crime scene at which time he was not a suspect. As the investigation unfolded, the defendant was placed under arrest. The record reveals that the defendant was cooperating with the police and that he was in fact, well treated. The defendant made no allegations whatsoever, that he was in any way threatened or coerced. The record gives no indication of coercion. To the contrary, the defendant was never handcuffed the entire time he was at North Investigations and was on numerous occasions offered food and drink. During the time the defendant's clothes were taken for testing, he was allowed to wait alone in Investigator Allison's office. Finally, when the defendant indicated that he no longer wanted

to be questioned, all questioning ceased. It is clear therefore, that the defendant's statements were voluntarily made.

For all of the above reasons, the State of Illinois urges this Court to grant certiorari to correct the erroneous ruling of the Appellate Court of Illinois which totally miscontrues the proper analysis of the Constitutional guarantees of the Fifth and Fourteenth Amendments.

CONCLUSION

For all the foregoing reasons, the State of Illinois respectfully requests that a writ of certiorari issue to review the judment of the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,

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APPENDIX A
Docket No.85-3141
THE PEOPLE OF THE STATE OF ILLINOIS,
Appellant,
v. CARY WAYNE WISEMAN, Appellee.

GERALD ROHRER

Defendant, Cary Wayne Wiseman, was indicted for murder. (Ill.Rev.Stat. 1983, ch. par. 9-1 (a) (1).) He filed a motion to suppress statements which was granted after an evidentiary hearing. The State now appeals and contends that defendant voluntarily confessed to the crime and that the trial court improperly suppressed his statements.

The testimony of Officers William McHenery, Gerald Janosz and David Carter was substantially similar. Officer McHenery testified that at 11:05 p.m. on February 25, 1985, he recieved a radio report that a person identified as "Cary" had a body at 9604 Bianco Terrace in Maine

Township. Officer McHenery arrived at the apartment simultaneously with Officer Janosz. "Sobbing sounds" emanated from an open first-floor apartment. The officers pushed the door and observed defendant kneeling over the multilated body of a female. Defendant held the body with his right hand and the telephone in his left hand. The officers asked him to stand but he did not respond. After a struggle, Officers McHenery, Janosz and Carter, who had arrived on the scene, pulled defendant from the body. Defendant, who was hysterical, fought the officers, mumbled "I'm going to get even with John," and fell into an apparent faint. An ambulance arrived and transported defendant to the hospital.

Officer Janosz added that the victim's throat had been cut, and that there was

knife in the center of the body. He also stated that defendant cried. "Faith didn't deserve this," and that defendant appeared to be consoling the corpse. After the officers restrained defendant and removed him from the crime scene, they searched the apartment to determine if anyone else was there.

According to Officer Carter, defendant cried, screamed, became voluble then quiet. The officers asked his name, why he was at the apartment, how he got there and who the victim was. Defendant identified the victim as "Faith" and told Officer Carter how he arrived there. When the ambulance arrived to transport defendant to the hospital, he refused to walk. After defendant was treated at the hospital, at 2 a.m. he was transported to the police station by Investigator Allison. Fifteen

minutes later the investigator questioned defendant about how he arrived at the crime scene. Defendant's statement was different than what he had told Officer Carter, who interrupted defendant and told the investigator what defendant had previously said. Investigator Allison then advised defendant of the Miranda warings which defendant said he understood. Defendant did not ask for an attorney.

Officer Ronald Jones testified that during the early morning hours after the crime he reported to the crime scene and interviewed residents of the building. Next, he spoke to the defendant's wife, the victim's parents and defendant's friend, Jerry Johanna. According to Jones, defendant did not ask to speak to a lawyer, but asked for his wife and mother when the officer spoke to him a 6 a.m. At that time

Investigator Allison told the officer that defendant used the name "Steve" during a homosexual relationship and that Johanna knew defendant as "Steve." The officer also stated that defendant's wife advised him that she had offered to drive defendant to the victim's apartment, but he declined and said he "didn't like her dropping him at places where he was staying."

Officer T.R. Smith testified that at midnight on February 25, 1985, he went to the crime scene then to the hospital where he spoke to Investigator Allison who said tht defendant had been experiencing "sever mood changes" of hostility, friendleness, congeniality, offensiveness and remorse-fulness. Investigator Allison described defendant as schizophrenic. At 6 a.m. Officer Smith interviewed defendant at the police station after determining ne had

been advised of his Miranda rights. Defendant related what had occurred the previous night and spoke with other officers and an assistant State's Attorney. He asked to speak to his wife and mother, but did not ask for an attorney. Defendant spoke to his wife at 7:30 a.m. and by telephone to his mother in florida.

Assistant State's Attorney Dennis Wolter testified that at 10:15 a.m. on February 26, 1985, he interviewed defendant in the presence of assistant State's Attorney Bruno and Investigator Kenneth Harris. Attorney Wolter advised defendant of the Miranda rights and identified himself. Defendant answered coherently, but acted as though he did not want to be interviewed. Attorney Wolter stopped the interview after five minutes. Defendant did not ask for an attorney and was neither abused nor threatened.

Assistant State's Attorney Bruno testified that at 7:50 a.m. on February 26, 1985, he interviewed defendant with Investigator Harris. The attorney advised defendant of the Miranda rights and that he was a suspect. Defendant agreed to be interviewed and was questioned for 30 minutes. He was coherent and did not manifest a split personality. Bruno had not been told that defendant was schizophrenic, but had been informed that defendant used the name "Steve" during homosexual relationships.

Investigator Kenneth Harris testified that he interviewed defendant at 2:30 a.m. on February 26, 1985, but noted nothing unusual about him and had no problems communicating with him. Defendant's request for cigarettes was granted and his wife brought him a change of clothes before the assistant State's Attorneys interviewed him.

Investigator Larry Allison testified that prior to interviewing defendant, Officer Carter advised him that defendant resented the police, had to be physically removed from the body and had referred to "John" as a suspect. When the investigator interviewed defendant, the latter was garrulous and provided personal information without questioning. After the investigator identified himself and his purpose, and although he as not yet a suspect, defendant became emotional, uncooperative, and unfriendly. He showed the investigator an abrasion above his belt which he claimed was caused by a police officer. Investigator Allison thought that defendant was under the influence of drugs or alcohol. According to the investigator, defendant had told a doctor at the hospital that he had planed to kill "John for what he had

done to Faith." The investigator then transported defendant to the station to prevent him from pursuing "John."

When defendant told Investigator Allison how he had arrived at the crime scene, Office Carter interrupted and said that defendant previously said that Jerry Johanna had brought him there. Defendant became "white" and Investigator Allison, believing him to be the murderer, advised him of the Miranda warings. When defendant refused to discuss Johanna, the questioning ceased. Defendant's clothing and fingerprints had been taken and the investigator returned at 3:30 a.m.

Although defendant asked to speak with his mother and wife, he was "put off" until the interview was completed. Investigator Allison told defendant that he believed he had murdered the victim.

Kim Wiseman, defendant's wife, testified that at 3:15 a.m. on February 26, 1985, two policemen came to her residence. At 10 a.m. Wiseman telephoned the police station and talked to defendant who denied that he had committed the murder and asked Wiseman to come to the station. When Wiseman arrived there defendant wore white baggy pants and a sweat shirt. He looked "tired," "distraught," "teary eyed" and "a mess, a wreck." He denied that he had commited the crime and cried. Wiseman stated the although she was married to defendant , he lived with other women and that on February 25,1985, she had driven him to a tavern.

A stipulation was entered that if Dr. Bisek testified he would state that when he examined defendant during the early moring hours of February 26, 1985, defendant had

124 milligrams per deciliter of alcohol in his blood and was diagnosed as suffering a situational reaction with depression.

We shall now consider determining whether it was improper for the trial court to conclude that defendant's statement was involuntary. The trial court's finding on the voluntariness of a confession will not be disturbed on review unless it is against the manifest weight of the evidence. People v. Underwood (1982), 108 Ill.2d 846, 439 N.E.2d 1080.) The States bears a heavy burden of establishing that a statement was intelligently and voluntarily made. (People v. Kincaid (1981), 87 Ill.2d 107, 429 N.E.2d 508.) When an accused makes a statement to law enforcement officials in circumstances which dictate that the former's will was overborne, or the statement was not a product of a rational intellect, that statement is involuntary and thus in-

admissible at trial. (People v. Hernandez (1982), 105 Ill.App.3d 501, 434 N.E.2d 532.) This does not mean only that statements induced by physical coercion or promised of leniency or immunity are involuntary. Consideration is to be given to the details of the interrogation and the characteristics of the accused. People v. Sickley (1983), 114 Ill.App.3d 167, 448 N.E.2d 612.

Upon entering its decision, herein, the trial court determined that defendant's statements were divided into three phases, i.e., those made at the crime scene commencing at 10 p.m., those made upon his arrival at the police station at 2 a.m. where he had been taken for his protection and that of others, and those made after his clothing had been taken after 3 a.m. The court concluded that statements made

during the first phase were voluntary and for informational purposes in solving the crime. There was no requirement that he be advised of the Miranda rights, his detention was for his protection and that of others, and the information sought was to assist in the apprehension of "John." The statements made during the second phase, the trial court concluded, were also voluntary and were part of the continuing investigatory process. That phase ended when Officer Carter advised Investigator Allison that defendant had previously provided a different version of how he had arrived at the victim's apartment. Then, defendant became a suspect and the investigator advised him of the Miranda warnings.

During the third phase, defendant's clothing had been taken from him, he had

not had an opportunity to rest, he had been repeatedly questioned by a number of law enforcement officials, and he had not eaten. The trial court found that the atmosphere in the interrogation room was so coercive that defendant's will was overborne, that he was "put off" from communicating with family members who may have obtained counsel, and that his inculpatory statement was in fact involuntary. From our review of the record, we cannot conclude that the decision of the trial court was manifestly erroneous.

Accordingly, the judgment of the circuit court of Cook County is affirmed.

SULLIVAN, P.J., PINCHAM and LORENZ, JJ.,concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

December 4, 1986

Hon. Richard M. Daley
Cook County State's Attorney
Richard J. Daley Center R. 574
Chicago, Il 60602

No. 64244 - People State of Illinois,
petitioner,
v.
Cary Wayne Wiseman,
respondent.
Leave to appeal, Appelate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 29, 1986.